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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-71530; File No. SR-NASDAQ-2014-015]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to the Qualified Market Maker Incentive Program and NBBO Setter Incentive Program under Rule 7014, and the Schedule of Fees and Rebates under Rule 7018
February 12, 2014.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on January 31, 2014, The NASDAQ Stock Market LLC (“NASDAQ” or the “Exchange”) filed with the Securities and Exchange Commission (“Commission”) a proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of the Substance of the Proposed Rule Change

NASDAQ is proposing to make changes to the Qualified Market Maker (“QMM”) Incentive Program and NBBO Setter Incentive Program under Rule 7014, and the schedule of fees and rebates for execution and routing of orders under Rule 7018. NASDAQ will begin assessing the fees effective February 3, 2014.

The text of the proposed rule change is available at NASDAQ’s principal office, and at the Commission’s Public Reference Room.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASDAQ included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NASDAQ is proposing several changes to the QMM Incentive Program and NBBO Setter Incentive Program under Rule 7014, and to its schedule of fees and credits applicable to execution and routing of orders under Rule 7018, which is described in detail below.

QMM Incentive Program

A QMM is a member that makes a significant contribution to market quality by providing liquidity at the NBBO in a large number of stocks for a significant portion of the day. In addition, the member must avoid imposing the burdens on NASDAQ and its market participants that may be associated with excessive rates of entry of orders away from the inside and/or order cancellation. The designation reflects the QMM's commitment to provide meaningful and consistent support to market quality and price discovery by extensive quoting at the NBBO in a large number of securities. In return for its contributions, certain financial benefits are provided to a QMM with respect to a particular MPID (a "QMM MPID"), as described under Rule 7014(e). These benefits include a lower rate charged for executions of orders in securities priced at \$1 or more per share that access liquidity on the NASDAQ Market Center and that are entered

through a QMM MPID.³ The current charge assessed on a member for removing liquidity on NASDAQ is \$0.0030 per share executed, irrespective of the security's listing venue (i.e., NASDAQ, NYSE, or other).⁴ QMM MPIDs, however, receive a lower charge of \$0.0029 per share executed, also irrespective of the securities listing venue. NASDAQ is proposing to limit the reduced charged [sic] provided to QMM MPID orders that remove liquidity to only securities listed on venues other than NASDAQ (i.e., NYSE or other). When NASDAQ adopted the current rate, it noted that the changes it was making were intended to encourage members to promote price discovery and market quality by quoting at the NBBO for a significant portion of each day in a large number of securities, thereby benefitting NASDAQ and other investors by committing capital to support the execution of orders.⁵ NASDAQ notes that the program with respect to NASDAQ-listed has not been successful in providing material improvement in market quality in such securities and believes that applying the current default rate of \$0.0030 should not affect the quality of the market given current market conditions.

NBBO Setter Incentive Program

The NBBO Setter Incentive Program provides incentive to members to set the NBBO or quote at the NBBO on NASDAQ, thus improving the quality of the market. Under Rule 7014(f)

³ Rule 7014(e)(3) further requires, however, that after the first month in which an MPID becomes a QMM MPID, the QMM's volume of liquidity added, provided, and/or routed through the QMM MPID during the month (as a percentage of Consolidated Volume) is not less than 0.05% lower than the volume of liquidity added, provided, and/or routed through such QMM MPID during the first month in which the MPID qualified as a QMM MPID (as a percentage of Consolidated Volume).

⁴ NASDAQ provides lower charges for removing liquidity from the NASDAQ Market Center, as described in Rule 7018(a).

⁵ Securities Exchange Act Release No. 70361 (September 10, 2013), 78 FR 56962 (September 16, 2013) (SR-NASDAQ-2013-114); see also Securities Exchange Act Release No. 68905 (February 12, 2013), 78 FR 11716 (February 19, 2013) (SR-NASDAQ-2013-023).

and unlike other members, a QMM may not receive both an Investor Support Program (“ISP”) credit and NBBO Setter Incentive credit, but rather receives only the greater credit of the two. The Exchange is proposing to expand the limitation on receiving only the greater of an ISP credit or NBBO Setter Incentive Program credit under Rule 7014(f) to all members. Specifically, the Exchange is deleting text in Rule 7014(f) that limits only QMMs to a single credit under the programs and is adding text to apply the limitation to all members that participate in the programs. As a consequence, members that are eligible to receive credits under both programs will only receive the larger credit of the two.

Amended Fees for Execution and Routing of Securities Listed on NASDAQ (Tape C)

NASDAQ is proposing to modify certain charges assessed and credits provided under Rule 7018(a)(1). First, under Rule 7018(a)(1), NASDAQ assesses a charge of \$0.0029 per share executed on members that enter Market-on-Close (“MOC”) and/or Limit-on-Close (“LOC”) orders executed in the NASDAQ Closing Cross, entered through a single MPID that represent more than 0.06% of Consolidated Volume during the month. NASDAQ originally introduced the discount charge because it believed that members that participate in the NASDAQ Closing Cross to a significant extent through the use of MOC and/or LOC orders are frequently acting on behalf of institutional investor customers.⁶ At the time, NASDAQ believed that members may have been giving NASDAQ lower relative priority in their order routing decisions due to its relatively high fees for accessing liquidity, as compared with lower cost exchanges. As a consequence, liquidity providers on NASDAQ may have been receiving larger orders that had already attempted to access liquidity elsewhere, such that the order was more likely to have an impact on the price of the stock. NASDAQ hoped that lowering the fees for these members they

⁶ Securities Exchange Act Release No. 68421 (December 13, 2012), 77 FR 75232 (December 19, 2012) (SR-NASDAQ-2012-135).

would be encouraged [sic] to give greater priority to NASDAQ in their routing decisions, thereby lowering their cost and improving the execution experience of liquidity providers. Moreover, NASDAQ hoped to encourage greater use of its Closing Cross through the reduction in the charge. NASDAQ notes that [sic] reduced rate has not materially improved the market in Tape C securities and therefore is proposing to increase the charged assessed from \$0.0029 to \$0.0030 per share executed.

Second, NASDAQ is proposing to increase the charge assessed a member that enters a TFTY order⁷ that executes on a venue other than NASDAQ OMX BX (“BX”) or NASDAQ OMX PSX (“PSX”). Currently, NASDAQ assesses a charge of \$0.0005 per share executed for such TFTY orders and NASDAQ is proposing to increase the charge to \$0.0007 per share executed. Third, NASDAQ is proposing to increase the charge for QDRK, or QCST orders⁸ that execute in a venue other than the NASDAQ Market Center. NASDAQ currently assesses a

⁷ TFTY is a routing option under which orders check NASDAQ for available shares only if so instructed by the entering firm and are thereafter routed to destinations on the applicable routing table. If shares remain un-executed after routing, they are posted to the book. Once on the book, if the order is subsequently locked or crossed by another market center, the System will not route the order to the locking or crossing market center.

⁸ QDRK is a routing option under which orders check NASDAQ for available shares and simultaneously route the remaining shares to destinations on the applicable routing table that are not posting Protected Quotations within the meaning of Regulation NMS. If shares remain un-executed after routing, they are posted on the book. Once on the book, if the order is subsequently locked or crossed by another market center, NASDAQ will not route the order to the locking or crossing market center.

QCST is a routing option under which orders check NASDAQ for available shares and simultaneously route the remaining shares to destinations on the applicable routing table that are not posting Protected Quotations within the meaning of Regulation NMS and to certain, but not all, exchanges. If shares remain un-executed after routing, they are posted on the book. Once on the book, if the order is subsequently locked or crossed by another market center, NASDAQ will not route the order to the locking or crossing market center.

charge of \$0.0005 per share executed for such QDRK, or QCST orders and NASDAQ is proposing to increase the charge to \$0.0007 per share executed. Lastly, NASDAQ is proposing to eliminate the \$0.0011 per share credit provided to members that enter QCST orders in NASDAQ-listed securities that execute on BX, and provide no charge or credit for such orders. These changes will reduce costs in a period of reduced trading volumes and are unlikely to have a significant impact on members that use NASDAQ's routing services, as the charges remain relatively low.

Amended Fees for Execution and Routing of Securities Listed on NYSE (Tape A)

NASDAQ is proposing to modify certain charges assessed and credits provided under Rule 7018(a)(2). Specifically, NASDAQ is proposing to amend fees assessed for routing orders in New York Stock Exchange, Inc. ("NYSE") -listed securities. First, NASDAQ is proposing to increase the charge assessed a member that enters a TFTY order that executes on a venue other than NYSE, NASDAQ OMX BX or NASDAQ OMX PSX. Currently, NASDAQ assesses a charge of \$0.0005 per share executed for such TFTY orders and NASDAQ is proposing to increase the charge to \$0.0007 per share executed. Second, NASDAQ is proposing to increase the charge for QDRK, or QCST orders that execute in a venue other than the NASDAQ Market Center. NASDAQ currently assesses a charge of \$0.0005 per share executed for such QDRK, or QCST orders and NASDAQ is proposing to increase the charge to \$0.0007 per share executed. Third, NASDAQ is proposing to eliminate the \$0.0011 per share credit provided to members that enter QCST orders in NYSE-listed securities that execute on NASDAQ OMX BX, and provide no charge or credit for such orders. Lastly, the Exchange is proposing to eliminate the \$0.0004 credit provided for DOTI orders that orders [sic] that execute in NASDAQ OMX BX, and provide no charge or credit for such orders. These changes will reduce costs in a period of

reduced trading volumes and are unlikely to have a significant impact on members that use NASDAQ's routing services, as the charges remain relatively low.

Amended Fees for Execution and Routing of Securities Listed on Exchanges other than NASDAQ and NYSE (Tape B)

NASDAQ is proposing to modify certain charges assessed and credits provided under Rule 7018(a)(3). Specifically, NASDAQ is proposing to amend fees assessed for routing orders in securities listed on exchanges other than NASDAQ or NYSE. First, NASDAQ is proposing to increase the charge assessed a member that enters a TFTY order that executes on a venue other than NASDAQ OMX BX or NASDAQ OMX PSX. Currently, NASDAQ assesses a charge of \$0.0005 per share executed for such TFTY orders and NASDAQ is proposing to increase the charge to \$0.0007 per share executed. Second, NASDAQ is proposing to increase the charge for QDRK, or QCST orders that execute in a venue other than the NASDAQ Market Center. NASDAQ currently assesses a charge of \$0.0005 per share executed for such QDRK, or QCST orders and NASDAQ is proposing to increase the charge to \$0.0007 per share executed. Third, NASDAQ is proposing to eliminate the \$0.0011 per share credit provided to members that enter QCST orders in securities listed on exchanges other than NASDAQ or NYSE that execute on NASDAQ OMX BX, and provide no charge or credit for such orders. Lastly, the Exchange is proposing to eliminate the \$0.0004 credit provided for DOTI orders that orders [sic] that execute in NASDAQ OMX BX, and provide no charge or credit for such orders. These changes will reduce costs in a period of reduced trading volumes and are unlikely to have a significant impact on members that use NASDAQ's routing services, as the charges remain relatively low.

Amended Fees for Execution in the Closing, Opening and IPO/Halt Crosses

The Exchange is proposing to charge a fee for all other quotes and orders executed in the NASDAQ Closing Cross, other than MOC and LOC orders. Currently, the Exchange assesses a fee of \$0.0010 per share executed⁹ for MOC and LOC orders that execute in the Closing Cross, and charges no fee for all other quotes and orders executed in the Closing Cross. The Exchange is proposing to assess a fee of \$0.0002 per share executed for all other quotes and orders executed in the NASDAQ Closing Cross, other than MOC and LOC orders. This change will help the Exchange recapture some of the costs it incurs operating the cross system, while maintaining relatively low fees for the execution of orders in the Closing Cross.

The Exchange is proposing to charge a fee for all other quotes and orders executed in the Nasdaq Opening Cross, other than MOC, LOC, Good-till-Cancelled (“GTC”), and Immediate-or-Cancel (“IOC”) orders. Currently, the Exchange assesses a fee of \$0.0005 per share executed for the net number of buy and sell shares up to a maximum of \$15,000 per firm per month for MOC and LOC, GTC, and IOC orders that execute in the Opening Cross, and charges no fee for all other quotes and orders executed in the Opening Cross. The Exchange is proposing to assess a fee of \$0.0002 per share executed for all other quotes and orders executed in the NASDAQ Closing [sic] Cross, other than MOC, LOC, GTC, and IOC orders. The Exchange is also proposing to increase the fee assessed for MOC, LOC, GTC, and IOC orders executed in the Opening Cross from \$0.0005 per share executed, to \$0.0010 per share executed for the net number of buy and sell shares up to a maximum of \$15,000 per firm per month. These changes will help the Exchange recapture some of the costs it incurs operating the cross system and will

⁹ Except as provided in Rule 7018(d)(2), which provides that High Volume MPIDs pay a discounted fee of \$0.0001 per share executed with respect to executions of “Market-On-Close” and “Limit-on-Close” orders when the same High Volume MPID is on both sides of the trade.

simplify the Exchange's fee schedule, while maintaining relatively low fees for the execution of orders in the Opening Cross.

The Exchange is proposing to increase the fee assessed for quotes and orders executed in the NASDAQ IPO/Halt Cross. Currently, the Exchange assesses a fee on all quotes and orders executed in the IPO/Halt Cross of \$0.0005 per share executed. The Exchange is proposing to increase this fee to \$0.0010 per share executed. The increased fee will help the Exchange recapture some of the costs it incurs operating the cross system and will simplify the Exchange's fee schedule, while maintaining relatively low fees for the execution of orders in the IPO/Halt Cross.

Amended Fees for Designated Liquidity Providers

The Exchange is proposing to amend language in Rule 7018(i), which concerns the applicability of fees and credits for execution of a Qualified Security¹⁰ by one of its Designated Liquidity Providers ("DLP"). As defined in Rule 7018(i)(2), a DLP is a registered NASDAQ market maker for a Qualified Security that has committed to maintain minimum performance standards.¹¹ Under Rule 7018(i), a DLP is assessed a charge for removing liquidity from NASDAQ and a credit for adding liquidity thereto in its Qualified Securities. The charge and credit is meant to apply to DLPs in their Qualified Securities, to the exclusion of other charges

¹⁰ Rule 7018(i)(1) defines Qualified Security as an exchange-traded fund or index-linked security listed on Nasdaq pursuant to Nasdaq Rules 5705, 5710, or 5720, and it has at least one Designated Liquidity Provider.

¹¹ The rule further provides that a DLP shall be selected by NASDAQ based on factors including, but not limited to, experience with making markets in exchange-traded funds and index-linked securities, adequacy of capital, willingness to promote NASDAQ as a marketplace, issuer preference, operational capacity, support personnel, and history of adherence to NASDAQ rules and securities laws. Moreover, the rule permits NASDAQ to limit the number of Designated Liquidity Providers in a security, or modify a previously established limit, upon prior written notice to members.

and credits for execution under the rules. As currently drafted, only charges and credits provided under the preceding paragraphs of Rule 7018 are excluded from applying to DLPs in their Qualified Securities. The rebate programs under Rule 7014, however, are not excluded from applying to DLPs in their Qualified Securities. The Exchange is proposing to add language to Rule 7018(i) that also excludes the rebate programs under Rule 7014 from applying to DLPs in their Qualified Securities.

The Exchange is also proposing to eliminate the current charge assessed DLPs for entering an order that executes in the NASDAQ Market Center or attempts to execute in the NASDAQ Market Center prior to routing. NASDAQ assesses DLPs a charge of \$0.003 per share executed for securities priced at \$1 or more per share for an order that executes in the NASDAQ Market Center or attempts to execute in the NASDAQ Market Center prior to routing. For such orders in securities priced at less than \$1 per share, the normal execution fees under 7018(a) apply. NASDAQ is proposing to eliminate this charge so that the normal charges apply to all orders that a DLP enters in one of its Qualified Securities that executes in the NASDAQ Market Center or attempts to execute in the NASDAQ Market Center prior to routing. As a consequence, DLPs will be eligible to receive reduced fees for such orders under other provisions of Rule 7018.

Lastly, NASDAQ is proposing to eliminate the cap on the credit provided to DLPs under Rule 7018(i). Currently, NASDAQ limits the credit a DLP may receive to 10 million shares average daily volume and applies normal credits under 7018(a) to shares greater than 10 million average daily volume and nondisplayed liquidity. NASDAQ is deleting the limitation in its entirety, which may promote greater participation in the program.

2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,¹² in general, and with Sections 6(b)(4) and 6(b)(5) of the Act,¹³ in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which NASDAQ operates or controls, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the changes to the QMM Program are reasonable because they serve to maintain an incentive structure designed to benefit all market participants by encouraging quoting at or near the NBBO in a wide range of securities that are not listed on NASDAQ, while also removing the incentive with respect to NASDAQ-listed securities priced at \$1 or more per share that access liquidity on the NASDAQ Market Center. As noted, the QMM program is intended to encourage members to promote price discovery and market quality by quoting at the NBBO for a significant portion of each day in a large number of securities, thereby benefitting NASDAQ and other investors by committing capital to support the execution of orders. NASDAQ's observation has been that the lower charge of the program has not materially increased the quality of the market in the NASDAQ Market Center with respect to NASDAQ-listed securities. As such, NASDAQ believes that applying the normal rate in the absence of the desired improvement in the market at the lower rate is an equitable allocation of a reasonable fee. Moreover, NASDAQ believes that the removal of the reduced fee is not unfairly discriminatory because it applies the default rate to Tape C securities, while maintaining a lower

¹² 15 U.S.C. 78f.

¹³ 15 U.S.C. 78f(b)(4) and (5).

incentive rate in securities in Tape A and B securities, where the reduced fee has been effective in improving the market in such securities in NASDAQ. NASDAQ believes that the current market quality in Tape C securities in the NASDAQ Market Center should continue, notwithstanding the elimination of the reduced charge. Accordingly, NASDAQ's proposed change is designed to maintain the benefits associated with the QMM program while reducing its cost, thereby making the program sustainable in the longer term.

The changes to the NBBO Setter Incentive program are consistent with a fair allocation of a reasonable fee and not unfairly discriminatory because they are intended to encourage members to add liquidity at prices that benefit all NASDAQ market participants and the NASDAQ market itself, and enhance price discovery, by establishing a new NBBO or allowing NASDAQ to join the NBBO established by another trading center. As the rule is currently written, only QMMs are precluded from receiving both a credits under the NBBO Setter Incentive program and the ISP. NASDAQ believes that it is an equitable allocation of a reasonable fee to extend the restriction on receiving multiple credits currently imposed on QMMs to all members because both QMMs and non-QMM members participating in the NBBO Setter Incentive program and ISP are providing the same market improvement under the two programs. Likewise, the Exchange believes that removing the distinction between QMMs and non-QMM members is not unfairly discriminatory because the change eliminates a distinction currently made in the rules applied to members that provide the same improvement to market quality under the ISP and NBBO Setter Incentive program.

The proposed increase to the charge assessed on members with MOC and/or LOC orders in securities listed on NASDAQ, which are executed in the NASDAQ Closing Cross and entered through a single MPID that represents more than 0.06% of Consolidated Volume during the

month is reasonable because it aligns the fee assessed with the default rate assessed for orders that execute in the NASDAQ Market Center. NASDAQ notes that current lower charge is designed to attract buyers to the NASDAQ Closing Cross and to incentivize members to use MOC and LOC orders, thereby providing a deep market and greater participation in the Closing Cross. NASDAQ is increasing the charge to cover costs associated with maintaining and improving the Closing Cross system. Accordingly, NASDAQ believes it is reasonable to assess the default fee of \$0.0030 per share executed of a NASDAQ-listed security on members that remove liquidity in the NASDAQ Closing Cross. Moreover, NASDAQ believes that the fee is equitably allocated because all members with MOC and/or LOC orders in Tape C securities listed on NASDAQ that are executed in the NASDAQ Closing Cross and entered through a single MPID that represents more than 0.06% of Consolidated Volume during the month are assessed the same charge. The Exchange believes that increasing the charge does not discriminate unfairly because it is a modest increase tied to the benefit derived from participating in the Closing Cross.

NASDAQ believes that the increase in the charge for TFTY orders that execute in venues other than NASDAQ OMX BX, NASDAQ OMX PSX, and in the case of Tape A securities, also venues other than NYSE is reasonable because the Exchange is raising the fee [sic] modest amount to account for costs associated with routing such orders to other venues. In this regard, NASDAQ notes that the fee is lower than fees assessed for routing and execution of other orders in securities of each of the three Tapes. NASDAQ believes that the proposed increase is equitably allocated because it will apply to all members that receive an execution in a TFTY order in the venues noted above. Lastly, the Exchange believes that the proposed fee increase is not unfairly discriminatory because it represents a modest increase in the charge assessed, which

continues to be lower than the charges assessed for the execution of TFTY orders at other venues.

The increase in the charge for QDRK, or QCST orders in securities of all three Tapes that execute in a venue other than the NASDAQ Market Center is reasonable because it represents a modest increase in the fee to account for increased costs associated with routing orders to other venues than NASDAQ. The proposed increase in the charge is equitably allocated because all members that enter QDRK or QCST orders in any security of the Tapes that executes in another venue [sic]. The proposed increase in the charge is not unfairly discriminatory because it raises an already significantly reduced rate for certain routed orders that execute in a venue other than the NASDAQ Market Center as compared to charges assessed for other routed orders.

The elimination of the \$0.0011 per share credit provided to members entering QCST orders that execute in BX is reasonable because NASDAQ is merely eliminating the credit provided for such an execution, and in its place assessing no charge. A QCST order simultaneously accesses the NASDAQ book and routes to other venues, including BX.¹⁴ Elimination of the credit is equitably allocated and not unfairly discriminatory because all members that receive a QCST execution on BX will continue to receive the benefit of reduced fees for such executions in a security of any of the three Tapes. NASDAQ notes that the proposed elimination of the credit balances the desire to provide certain incentives with the costs the Exchange incurs in providing such incentives, which ultimately affect the ability to sustain them.

The elimination of the \$0.0004 per share credit provided to members entering DOTI orders that execute on BX is reasonable because NASDAQ is merely eliminating the credit

¹⁴ Rule 4758(a)(1)(A)(xiii).

provided for such an execution, and in its place is assessing no charge. A DOTI order attempts to execute against orders in the NASDAQ book at a price equal to or better than the NBBO. If unfilled, the order will then route to BX where it will also attempt to execute at the NBBO or better. If still unfilled, the order will route to NYSE or NYSE Amex where the order will remain until it is executed or cancelled. Elimination of the credit is equitably allocated and not unfairly discriminatory because all members that receive a DOTI order execution on BX will continue to receive the benefit of reduced fees for such executions. NASDAQ notes that the proposed elimination of the credit balances the desire to provide certain incentives with the costs the Exchange incurs in providing such incentives, which ultimately affect the ability to sustain them.

NASDAQ believes that the changes to the fees assessed for participation the NASDAQ Opening, Closing and IPO/Halt Crosses are consistent with a fair allocation of a reasonable fee and not unfairly discriminatory. NASDAQ believes that the fees are reasonable because supporting the crosses requires capital investment to maintain a system that facilitates an orderly auction process. Specifically, NASDAQ is proposing a modest fee increase for MOC, LOC, GTC and IOC orders executed in the Opening Cross, which will bring the charge in line with the charge assessed for MOC and LOC orders that are executed in the Closing Cross. Similarly, NASDAQ is proposing to assess a new charge on orders that execute in the Opening and Closing Crosses for orders that are not MOC, LOC, GTC or IOC, with respect to the Opening Cross, and not MOC and LOC orders with respect to the Closing Cross. The Exchange is also modestly increasing the charge assessed for all orders that execute in an IPO/Halt Cross. The proposed fees are equitably allocated because they apply a fee on all members that benefit from participation in the Opening, Closing and IPO/Halt Crosses, and are based on the type of order entered and contribution to market quality. Similarly, the proposed fees are not unfairly

discriminatory because they are based on the type of order executed in the cross and the benefit to market quality that such orders provide.

NASDAQ believes that the proposed exclusion of the availability of credits provided under Rule 7014 to DLPs in Qualified Securities is consistent with a fair allocation of a reasonable fee because the program is designed to supersede other pricing applicable to the execution of securities provided in Rule 7018, and extension of the exclusion to the rebate programs under 7014 is consistent with the nature of the program. As described above, the DLP is specifically designed to apply to NASDAQ market makers in certain Qualified Securities. DLPs receive specific credits and charges based on the nature of their transactions in their Qualified Securities. Accordingly, NASDAQ believes that limiting the benefits a DLP receives to the DLP program is reasonable and a fair allocation of credits. Likewise, the Exchange believes that removing the distinction between Rule 7018 credits and charges, and those provided under Rule 7014 is not unfairly discriminatory because it is consistent with the exclusive nature of the DLP program.

The Exchange also believes that eliminating the charge assessed DLPs for entering an order that executes in the NASDAQ Market Center or attempts to execute in the NASDAQ Market Center prior to routing is reasonable because it permits DLPs to achieve a better rate for such a routed orders to the extent that the order is eligible for a lower charge under other provisions of the fee schedule, thus making participation in the program more attractive. The Exchange believes the elimination of the charge is an equitable allocation of the fee because it will make DLPs eligible to achieve reduced rates in the same manner as other members are under Rule 7018. NASDAQ believes that elimination of the charge is not unfairly discriminatory because it allows DLPs to receive a benefit that other members currently enjoy.

Lastly, the elimination of the cap on the credit provided in Rule 7018(i) is reasonable and an equitable allocation of the credit because it is designed to promote greater participation in the program thereby improving market quality in Qualified Securities, which benefits all market participant in NASDAQ. Similarly, NASDAQ does not believe that the removal of the credit cap is unfairly discriminatory because the greater participation in the DLP program that the change is designed to encourage will benefit all market participants to the extent that the change is effective.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASDAQ does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.¹⁵ NASDAQ notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, NASDAQ must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, NASDAQ believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited. In this instance, although the change to the QMM program may limit the benefits of the program in NASDAQ-listed securities, the incentive program in question remains in place and is itself reflective of the need for exchanges to offer significant financial incentives to attract order flow. The changes to routing fees and credits do

¹⁵ 15 U.S.C. 78f(b)(8).

not impose a burden on competition because NASDAQ's routing services are optional and are the subject of competition from other exchanges and broker-dealers that offer routing services, as well as the ability of members to develop their own routing capabilities. The new and increased fees for execution in the NASDAQ crosses are reflective of a need to support and improve NASDAQ systems, which in turn benefit market quality and ultimately, competition. Finally, the changes to DLP program are reflective of the need for the Exchange to offer incentives to market participants balanced with the need to keep costs associated with providing the incentives at a level that will ensure the sustainability of the programs. NASDAQ is eliminating a charge under the program that will allow DLPs to be eligible to receive reduced rates for removing liquidity. NASDAQ is also removing a fee [sic] cap, which may attract more participation in the program. The DLP program is entirely voluntary, and as a consequence members may elect to participate in other incentive programs under which they may receive benefits for improving the market. In sum, if the changes proposed herein are unattractive to market participants, it is likely that NASDAQ will lose market share as a result. Accordingly, NASDAQ does not believe that the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing change has become effective pursuant to Section 19(b)(3)(A) of the Act,¹⁶ and paragraph (f)¹⁷ of Rule 19b-4, thereunder. At any time within 60 days of the filing of the

¹⁶ 15 U.S.C. 78s(b)(3)(A).

¹⁷ 17 CFR 240.19b-4(f)

proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NASDAQ-2014-015 on the subject line.

Paper comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NASDAQ-2014-015. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F

Street, NE, Washington, D.C. 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NASDAQ-2014-015, and should be submitted on or before [INSERT DATE 21 DAYS FROM PUBLICATION IN THE FEDERAL REGISTER].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁸

Kevin M. O'Neill,
Deputy Secretary.

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¹⁸ 17 CFR 200.30-3(a)(12).